



DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1709, 1719, 1734, 1738, 1739, 1770 and 1773

[Docket No. RUS-22-AGENCY-0053]

RIN 0572-AC61

Policy on Audits of RUS Awardees

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule; request for comment.

SUMMARY: The Rural Utilities Service (RUS or Agency), a Rural Development agency of the United States Department of Agriculture (USDA), is issuing a final rule with request for comment. The intent of this rule is to revise its Policy on Audits to change the title, remove an unnecessary report, update terminology, clarify Agency contacts and filing requirements and update or remove any outdated references. This document will also make conforming changes to other regulations. These changes will provide uniformity and consistency for all RUS awardees.

DATES: *Effective date:* This final rule is effective **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Comment date: Comments are due on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by docket number RUS-22-AGENCY-0053 and Regulatory Information Number (RIN) number 0572-AC61 through <https://www.regulations.gov>.

Instructions: All submissions received must include the Agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Jurleme Grey, Chief, Technical Accounting Review Branch, External Compliance Division, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250, Telephone: (202) 540-9200, Email: compliance.tarb@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Rural Development is a mission area within the USDA comprising RUS, Rural Housing Service, and Rural Business-Cooperative Service. Rural Development's mission is to increase economic opportunity and improve the quality of life for all rural Americans. The mission is met by providing loans, loan guarantees, grants, and technical assistance through numerous programs aimed at creating and improving housing, business, and infrastructure throughout rural America.

The RUS loan, loan guarantee, and grant programs act as a catalyst for economic and community development. By financing improvements to rural electric, water and waste, and telecommunications and broadband infrastructure, RUS also plays a significant role in improving other measures of quality of life in rural America, including public health and safety, environmental protection and cultural and historic preservation.

An update to this policy occurred on May 7, 2018 (83 FR 19905), to incorporate 2011 revisions to the Generally Accepted Government Auditing Standards issued by the Government Accountability Office, the clarified audit standards issued by the American Institute of Certified Public Accountants in 2011, and Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, in 2 CFR part 200, subpart F, Audit Requirements, issued by the Office of Management and Budget on December 26, 2013, and adopted by USDA on December 26, 2014. The update also expanded and clarified its regulations to include grant

recipients, amend its peer review requirements, amend its reporting requirements, expand the options for the electronic filing of audits, and clarify several existing audit requirements.

The present rulemaking will update regulations, clarify audit policy, and streamline procedures. The uniformity and consistency for all awardees should benefit both the awardees and Agency. Professional standards and guidance provide a framework for conducting high quality audits. To implement these changes, the Agency will publish this as a final rule with comment.

The Administrative Procedure Act exempts from prior notice rules, any actions, “relating to agency management or personnel or to public property, loans, grants, benefits, or contracts” (5 U.S.C. 553(a)(2)).

II. Summary of Changes to the Rule

The changes made to 7 CFR parts 1709, 1719, 1734, 1738, 1739 and 1770 are conforming changes to address the amended heading of part 1773 as addressed in paragraph 1 below and to clarify when entities must follow RUS’ own audit regulations or 2 CFR part 200.

The changes made to 7 CFR part 1773 include:

1. The heading to the part was changed from “Policy on Audits of RUS Borrowers and Grantees” to “Policy on Audits of RUS Awardees.” Using the term “Awardee” is more comprehensive as some awardees will receive grants, loans or a combination of both.

2. Section 1773.1(a), (c), and (d) were updated to replace outdated terminology and to make references to specific sections of the regulation.

3. Section 1773.2 was updated as follows and conforming changes made throughout the part as a result of these additions and deletions:

- (i) “AA-PARA,” Program Accounting and Regulatory Analysis Division, was deleted due to the Agency’s restructuring of the division. Throughout the regulation, corresponding changes will be made to replace AA-PARA with RUS. This change will keep the regulation from requiring amendments due to any future Agency restructuring.

(ii) It is anticipated that multiple changes will take place surrounding Agency reporting systems. The generic term “Agency Designated System” was added so each program can work with their awardees and instruct them on the correct system to use. The definitions for “Borrower Collection and Analysis System (BCAS)” and “Data Collection System (DCS)” were removed to eliminate the need for policy updates as changes to these systems occur.

(iii) The definition of “Audit” was updated to remove the reference to loan or grant and have it read “provisions of contracts or grant agreements” to streamline terminology.

(iv) The definitions for “Borrower” and “Grantee” were deleted and replaced with “Awardee” to be inclusive of all Agency recipients whether loan, grant or a combination of each. This change will help awardees understand the expenditure threshold for audit requirements could be from any or all Federal funding sources.

(v) Definitions for “financial statements” and “peer review” were added for clarity.

(vi) The definition for “regulatory liability” was updated to add “prescribed in ASC 980, entitled Regulated Operations” in place of “defined by FASB (Financial Accounting Standards Board)” for more clarity.

(vii) The definition for “related party” was updated to show that the FASB and GASB (Governmental Accounting Standards Board) agree on how the term is defined.

(viii) The definition for “report package” was updated to remove the requirement for the report on compliance with aspects of contractual agreements and regulatory requirements to be included. The addition of a complete set of financial statements has been added to ensure awardees understand these must be included with audit reports. See paragraph 4(i) below.

(ix) The definition of “RUS” was updated to include a website where contact information for the Agency could be obtained. This change will keep the regulation from needing to be updated for any future Agency restructuring.

(x) The definition of “RUS Bulletin 1773-1” was removed due to this bulletin being no longer relevant. The bulletin will be officially rescinded.

(xi) The definition of “RUS security agreement” was updated to change the term loan “agreement” to “contract.”

(xii) The definition of “Uniform System of Accounts” was updated to replace borrowers with awardees and to include references to specific regulatory sections.

4. Section 1773.3 was updated as follows:

(i) Paragraph (a) was updated to provide clarity for those auditees under the Single Audit Act. This section was also updated to reflect that financial statements should be prepared in accordance with Generally Accepted Accounting Principles (GAAP) or if using a special purpose framework that reconciling schedules should be provided. This clarification should assist awardees in providing all necessary information to appropriately analyze financial data.

(ii) Paragraph (b) was updated to replace AA-PARA with RUS.

(ii) The third sentence of paragraph (c) was updated to add “with grant funding only” after “Auditees” to provide clarity.

(iv) Paragraphs (d) introductory text and (d)(1) and (2) were updated to correspond with the correct section of 2 CFR part 200. Paragraph (d)(3) was updated to reference 2 CFR part 200 and to replace AA-PARA with RUS. Paragraph (d)(3)(i) was updated to reference reporting under 7 CFR part 1773.

(v) Paragraph (e) was updated to change borrower(s) to awardee(s).

5. Section 1773.4 was updated as follows:

(i) Paragraph (a)(3) was updated to clarify the auditee’s responsibility in selecting the audit firm.

(ii) Paragraphs (c) introductory text and (c)(1) and (2) were updated to replace AA-PARA with RUS and to reference specific regulatory sections.

(iii) Paragraph (e) was updated to indicate that auditees must obtain debarment certifications in accordance with 2 CFR 180.300 or 2 CFR part 417. Directing the awardee to

relevant CFR parts will help clarify the available methods of debarment certification available to the awardee.

(iv) Paragraph (f) was updated to clarify that auditee must obtain a copy of the auditor's most recently accepted peer review report which should be dated within 36 months of the engagement letter. This clarification is in accordance with the current American Institute of Certified Public Accountants (AICPA) guidelines.

(v) Paragraph (g) was updated to clarify that auditees must provide reconciliation schedules if a method other than GAAP is used. The reconciliation schedules are necessary to adequately analyze the financial performance of the awardee and determine the awardee's ability to meet short- and long-term obligations.

(vi) Paragraph (h) was updated to replace the term unqualified with unmodified. The change in terminology is in accordance with the current Generally Accepted Government Auditing Standards (GAGAS) guidelines.

(vii) Paragraphs (i) introductory text and (i)(1), (2), and (3) were updated to clarify that communication and submission requirements are electronic to ensure awardees understands paper mail in any form will not be acceptable. This clarification is to emphasis the requirement for electronic communication from previous revision. Paragraph (i)(3) was also updated to reference §1773.1(d).

(viii) Paragraph (j) was updated to indicate that written responses are due via email.

6. The introductory text of § 1773.5 and paragraph (c) were updated to provide clarity on auditors being enrolled in and complying with the requirements of an approved peer review program. As part of the update, paragraph (c)(2) was deleted and paragraph (c)(1) was redesignated as paragraph (d).

7. Section 1773.6 was updated as follows:

(i) Paragraphs (a) introductory text and (a)(7) were updated to clarify that the auditor and management should agree on the terms of the engagement and that the terms should be

documented in the engagement letter or other suitable agreement. This clarification is in accordance with AICPA and GAGAS requirements. Paragraph (a)(4) was updated to replace AA-PARA with RUS and paragraph (a)(9) was updated to indicate that imaging should be permitted in addition to photocopying.

(ii) Paragraph (b) was updated to indicate that the auditor and auditee are expected to retain the engagement letter and have it available for inspection by the Agency.

8. Section 1773.7 was updated as follows:

(i) Paragraph (a) was updated to indicate that RUS would respond in writing via email.

(ii) Paragraph (b) was updated to remove unnecessary language.

(iii) Paragraph (c) was updated to include the introductory text “Audit scope limitations are as follows”. Paragraph (c)(1) was updated to reference §1773.4(h). Paragraphs (c)(1) and (3) were updated to replace AA-PARA with RUS and paragraph (c)(2) was updated to change unqualified to unmodified.

9. Section 1773.8 was updated to make paragraph (a) the introductory text since there was not a paragraph (b) and paragraphs (a)(1) through (3) were redesignated as paragraphs (a) through (c). In addition, changes to the section were made to show that RUS would respond in writing via email and to replace AA-PARA with RUS.

10. Section 1773.9 was updated as follows:

(i) The heading of the section was updated from “Disclosure of fraud, and noncompliance with provisions of laws, regulations, contracts, and loan and grant agreements” to “Disclosure of fraud, and noncompliance with provisions of law, regulations, contracts, and grant agreements.”

(ii) Paragraphs (a) and (b) were updated to remove the terms “loan and” which corresponds to the revised title of the section.

(iii) Paragraph (c) was updated to indicate RUS would reply in writing via email.

Paragraph (c)(2) was updated to replace AA-PARA with RUS. Paragraphs (c)(3)(i) and (ii) were

updated to the current Office of Inspector General (OIG) offices and corresponding contact information.

11. Section 1773.10 was updated to show that auditors must make documentation available and permit the Agency to photocopy or image all documentation. Adding permission for imaging documentation is imperative with electronic communications between the Agency and both auditee and auditors.

12. Section 1773.20 was updated to remove paragraph (b) on communication with the governance board. Paragraph (b) has been removed because this section is a reiteration of the information in paragraph (a).

13. Section 1773.21 was updated as follows:

(i) Paragraphs (b) and (e) were updated to clarify audit submission requirements regarding format and system.

(ii) Paragraph (c) was updated to replace AA-PARA with RUS.

(ii) Paragraph (d) was updated to clarify what should be included in the reporting package.

The above changes will help ensure audit submissions are unlocked or unencrypted before uploading through the Agency designated system and should improve efficiency of Agency staff and reduce burden on awardees by reducing audit rejections and resubmissions.

14. Section 1773.31 was updated to clarify that auditors should form an opinion on the comparative financial statements and issue a written report that meets AICPA professional auditing standards and GAGAS requirements. The language in this section was restated to adhere more strictly with AICPA professional audit standards and GAGAS requirements.

15. Section 1773.32 was updated as follows:

(i) The heading of the section was updated from “Report on internal control over financial reporting and on compliance and other matters” to “Reports on internal control; compliance with provisions of laws, regulations, contracts, and grant agreements; and instances

of fraud.” The report title has been updated to conform with the most current Government Auditing Standards as issued by the Government Accountability Office. In addition, the use of a single report is at the discretion of the auditor. Should the auditor determine individual reports are warranted, separate reports could be issued.

(ii) Paragraph (a) was updated to remove “and loan” from two locations in the first sentence as a corresponding change. In addition, the last sentence was updated to include digital as an acceptable signature option.

(iii) In paragraphs (b) and (c), the statement “the report on internal controls over financial reporting and on compliance and other matters” was replaced with “the reports on internal control; compliance with provisions of laws, regulations, contracts, and grant agreements; and instances of fraud.” These are conforming changes to the updated heading of the section.

16. Section 1773.33 was amended by removing all requirements of this section and reserving the section. The Report of Compliance of Contractual Agreements and Regulatory Requirements shall no longer be a requirement as it no longer provides a meaningful benefit to RUS. Conforming changes were made to §§ 1773.2, 1773.31, and 1773.38.

17. Section 1773.34 was updated to clarify that the auditor must prepare a schedule of findings to be included with the reports on internal control; compliance with laws, regulations, contracts and grant agreements; and instances of fraud. This change in report title is in compliance with the current Government Auditing Standards guidance. AA-PARA was replaced with RUS in the last sentence.

18. Section 1773.38 was updated to clarify that audit requirements in 7 CFR part 1773 as a whole versus specific sections should be met annually by the auditor. The elimination of the Report of Compliance of Contractual Agreements and Regulatory Requirements removed the need to emphasize specific audit requirements applicable only to this report.

19. Sections 1773.39, 1773.41, 1773.42, 1773.43 and 1773.44 were amended by removing all requirements of the sections and reserving the sections. These sections provided

audit guidance or requirements that were specific to the Report of Compliance of Contractual Agreements and Regulatory Requirements. With the elimination of this report, these sections are no longer valid.

III. Executive Orders and Acts

Executive Order 12866

This final rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 12372, Intergovernmental Review of Federal Programs

This final rule is excluded from the scope of E.O. 12372, Intergovernmental Consultation, which may require consultation with state and local officials. See the final rule related notice entitled “Department Programs and Activities Excluded from Executive Order 12372” (50 FR 47034), advising that RUS loans and loan guarantees were not covered by E.O. 12372.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. In accordance with this final rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) No retroactive effect will be given to this rule; and (3) Administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit in court challenging action taken under this rule.

Regulatory Flexibility Act Certification

RUS has determined that this final rule will not have significant impact on a substantial number of small entities defined in the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The

RUS loan programs provide borrowers with loans at interest rates and terms that are more favorable than those generally available from the private sector. Borrowers, as a result of obtaining Federal financing, receive economic benefits that exceed any direct cost associated with RUS regulations and requirements.

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91-190, this final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has determined that i) this action meets the criteria established in 7 CFR 1970.53(f); ii) no extraordinary circumstances exist; and iii) the action is not “connected” to other actions with potentially significant impacts, is not considered a “cumulative action” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Assistance Listing Number (formally known as the Catalog of Federal Domestic Assistance)

The Assistance Listing Numbers assigned to the programs described by this final rule are as follows: 10.751 - Rural Energy Savings Program; 10.752 – Rural eConnectivity Pilot Program, 10.850 - Rural Electrification Loans and Loan Guarantees; 10.851 - Rural Telephone Loans and Loan Guarantees; 10.855 - Distance Learning and Telemedicine Loans and Grants; 10.858 - Denali Commission Grants and Loans; 10.859 - Assistance to High Energy Cost Rural Communities; 10.863 - Community Connect Grant Program and 10.886 Rural Broadband Access Loans and Loan Guarantees.

Information Collection and Recordkeeping Requirements

The information collection and recordkeeping requirements contained in this rule are approved by OMB under OMB Control Number 0572-0095. This final rule contains no new reporting or recordkeeping burdens. The 3-year renewal for this package is pending approval by OMB.

Unfunded Mandates

This final rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act of 1995) for state, local, and tribal governments or the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132 – Federalism

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the States is not required.

Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments

This E.O. imposes requirements on RUS in the development of regulatory policies that have Tribal implications or preempt Tribal laws. RUS has determined that the rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this rule is not subject to the requirements of E.O. 13175. If Tribal leaders are interested in consulting with RUS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or Rural Development's Native American Coordinator at: ALAN@usda.gov to request such a consultation.

E-Government Act Compliance

The Agency is committed to complying with the E-Government Act of 2002, Pub. L. 107-347, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible and to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Civil Rights Impact Analysis

Rural Development, a mission area for which RUS is an agency, has reviewed this rule in accordance with USDA Regulation 4300-4, Civil Rights Impact Analysis, to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, sex, gender identity (including gender expression), genetic information, political beliefs, sexual orientation, marital status, familial status, parental status, veteran status, religion, reprisal and/or resulting from all or a part of an individual's income being derived from any public assistance program. After review and analysis of the rule and available data, it has been determined that based on the analysis of the program purpose, application submission and eligibility criteria, issuance of this final rule is not likely to negatively impact very low, low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their race, color, national origin, sex, age, disability, or marital or familial status. No major civil rights impact is likely to result from this rule.

USDA Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotope, American Sign Language) should contact the responsible

Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.usda.gov/oascr>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) Mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410; or

(2) Fax: (833) 256-1665 or (202) 690-7442; or

(3) Email: program.intake@usda.gov

List of Subjects

7 CFR Part 1709

Administrative practices and procedure, Electric power, Grant programs-energy, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1719

Electric power, Grant programs-energy, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1734

Community development, Grant programs-education, Grant programs-health, Loan programs-education, Loan programs-health, Rural areas.

7 CFR Part 1738

Fees, Loan programs-communications, Rural areas, Telecommunications, Telephone.

7 CFR Part 1739

Grant programs-communications, Rural areas, Telecommunications, Telephone.

7 CFR Part 1770

Accounting, Loan programs-communications, Report and recordkeeping requirements, Rural areas, Telephone, Uniform System of Accounts.

7 CFR Part 1773

Accounting, Auditing, Electric power, Grant programs, Loan programs-communications, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set forth in the preamble, RUS amends 7 CFR parts 1709, 1719, 1734, 1738, 1739, 1770, and 1773 as follows:

PART 1709 - ASSISTANCE TO HIGH ENERGY COST COMMUNITIES

1. The authority citation for part 1709 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 901 *et seq.*

Subpart A – General Requirements

2. Amend § 1709.21 by revising paragraphs (a) and (b) to read as follows:

§ 1709.21 Audit requirements.

* * * * *

(a) If the recipient is a for-profit entity, an electric or telecommunications cooperative, or any other entity not covered by the definition of “non-Federal entity” in 2 CFR 200.1, the recipient shall provide an independent audit report in accordance with 7 CFR part 1773 and the grant agreement.

(b) If the recipient is a non-Federal entity, as defined in 2 CFR 200.1, the recipient shall provide an audit in accordance with subpart F of 2 CFR part 200.

PART 1719 – RURAL ENERGY SAVINGS PROGRAM

3. The authority citation for part 1719 continues to read as follows:

Authority: 7 U.S.C. 8107a (Section 6407).

Subpart B – Application, Submission and Administration of RESP Loans

4. Amend § 1719.13 by revising paragraphs (b) introductory text and (b)(1) and (2) to read as follows:

§ 1719.13 Auditing and accounting requirements.

* * * * *

(b) *Auditing requirements.* RESP borrowers will be required to prepare audits as follows:

(1) If the borrower is a for-profit entity, an electric or telecommunications cooperative, or any other entity not covered by the definition of “non-Federal entity” in 2 CFR 200.1, the borrower shall provide an independent audit report in accordance with 7 CFR part 1773 and the award agreement. The certified public accountant (CPA) is selected by the awardee and must be approved by RUS as set forth in 7 CFR 1773.5.

(2) If the borrower is a non-Federal entity, as defined in 2 CFR 200.1, the borrower shall provide an audit in accordance with subpart F of 2 CFR part 200.

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PART 1734 – DISTANCE LEARNING AND TELEMEDICINE LOAN AND GRANT PROGRAMS

5. The authority citation for part 1734 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*

Subpart A - Distance Learning and Telemedicine Loan and Grant Program – General

6. Amend § 1734.8 by revising paragraphs (a) through (c) to read as follows:

§ 1734.8 Audit requirements.

* * * * *

(a) If the awardee is a for-profit entity, an electric or telecommunications cooperative, or any other entity not covered by the definition of “non-Federal entity” in 2 CFR 200.1, the

awardee shall provide an independent audit report in accordance with 7 CFR part 1773 and the grant agreement.

(b) If the awardee is a non-Federal entity, as defined in 2 CFR 200.1, the awardee shall provide an audit in accordance with subpart F of 2 CFR part 200.

(c) Grant awardees shall comply with 2 CFR part 200, and rules on the disposition of grant assets in part 200 shall be applied regardless of the type of legal organization of the grantee.

PART 1738 – RURAL BROADBAND LOANS, LOAN/GRANT COMBINATIONS, AND LOAN GUARANTEES

7. The authority citation for part 1738 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*

Subpart F - Closing, Servicing, and Reporting for Loan and Loan/Grant Combination Awards

8. Amend § 1738.254 by revising paragraphs (a) and (b) to read as follows:

§ 1738.254 Accounting, reporting, and monitoring requirements.

(a) Awardees must adopt a system of accounts for maintaining financial records acceptable to the Agency, as described in 7 CFR part 1770, subpart B.

(b) Awardees will be required to prepare audits as follows:

(1) If the awardee is a for-profit entity, an electric or telecommunications cooperative, or any other entity not covered by the definition of “non-Federal entity” in 2 CFR 200.1, the awardee shall provide an independent audit report in accordance with 7 CFR part 1773 and the award agreement. The certified public accountant (CPA) conducting the annual audit is selected by the awardee and must be approved by RUS as set forth in 7 CFR 1773.5.

(2) If the awardee is a non-Federal entity, as defined in 2 CFR 200.1, the awardee shall provide an audit in accordance with subpart F of 2 CFR part 200.

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PART 1739 - BROADBAND GRANT PROGRAM

9. The authority citation for part 1739 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*

Subpart A – Community Connect Grant Program

10. Amend § 1739.20 by revising paragraphs (a) and (b) to read as follows:

§ 1739.20 Audit requirements.

* * * * *

(a) If the recipient is a for-profit entity, an electric or telecommunications cooperative, or any other entity not covered by the definition of “non-Federal entity” in 2 CFR 200.1, the recipient shall provide an independent audit report in accordance with 7 CFR part 1773 and the grant agreement. Please note that the first audit submitted to the Agency and all subsequent audits must be comparative audits as described in 7 CFR part 1773.

(b) If the recipient is a non-Federal entity, as defined in 2 CFR 200.1, the recipient shall provide an audit in accordance with subpart F of 2 CFR part 200.

PART 1770 – ACCOUNTING REQUIREMENTS FOR RUS TELECOMMUNICATIONS BORROWERS

11. The authority citation for part 1770 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

Subpart B – Uniform System of Accounts

12. Amend § 1770.13 by revising paragraph (a) to read as follows:

§ 1770.13 Accounting requirements.

(a) Each borrower shall maintain its books of accounts on the accrual basis of accounting. All transactions shall be recorded in the period in which they occur and reconciled monthly. The books of accounts shall be closed at the end of each fiscal year and financial statements shall be prepared for the period and audited in accordance with the provisions of 7 CFR part 1773.

* * * * *

PART 1773-POLICY ON AUDITS OF RUS AWARDEES

13. The authority citation for part 1773 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*, 7 U.S.C. 6941 *et seq.*

14. The heading for part 1773 is revised to read as set forth above.

Subpart A – General Provisions

15. Amend § 1773.1 by revising paragraphs (a), (c), and (d) to read as follows:

§ 1773.1 General.

(a) This part implements the standards for audits required by the loan contracts and grant agreements of Rural Utilities Service (RUS) electric and telecommunications awardees. The provisions in this part require auditees to prepare and furnish to RUS, at least once during each 12-month period, a full and complete report of its financial condition, operations, and cash flows, in form and substance satisfactory to RUS, audited by an independent auditor that meets the requirements of § 1773.5, and performed in accordance with auditing standards issued by generally accepted Government auditing standards (GAGAS) and the requirements of § 1773.7.

* * * * *

(c) This part further sets forth the criteria that an auditee should use to select an auditor and certain audit procedures and audit documentation that must be performed and prepared by the auditor.

(d) Failure of an auditee to provide an audit in compliance with this part is a serious violation of the RUS security agreement. RUS relies on audited financial statements in order to assess and monitor the financial condition of its awardees and to fulfill its fiduciary responsibilities.

* * * * *

16. Amend § 1773.2 by:

a. Removing the definition of “AA-PARA”;

- b. Adding, in alphabetical order, the definition of “Agency designated system”;
- c. Revising the definitions of “Audit” and Auditee”;
- d. Adding, in alphabetical order, the definition of “Awardee”;
- e. Removing the definitions of “BCAS”, “Borrower”, and “DCS”;
- f. Adding, in alphabetical order, the definition of “Financial statements”;
- g. Removing the definition of “Grantee”;
- h. Adding, in alphabetical order, the definition of “Peer review”;
- i. Revising the definitions of “Regulatory liability”, “Related party”, “Reporting package”, and “RUS”;
- j. Removing the definition of “RUS Bulletin 1773-1”; and
- k. Revising the definitions of “RUS security agreement” and “Uniform System of Accounts”.

The additions and revisions read as follows:

§ 1773.2 Definitions.

* * * * *

Agency designated system means the electronic system designated by the Agency for awardees to upload audit documents.

* * * * *

Audit means an examination of financial statements by an independent auditor for the purpose of expressing an opinion on the fairness with which those statements present financial position, results of operations, and changes in cash flows in accordance with U.S. generally accepted accounting principles (GAAP) and for determining whether the auditee has complied with applicable laws, regulations, and provisions of contracts or grant agreements that could have a material effect on the financial statements.

* * * * *

Auditee means a RUS awardee that is required to submit an annual audit as a condition of the award.

* * * * *

Awardee means an entity that has an outstanding RUS or Federal Financing Bank (FFB) loan or loan guarantee and/or a continuing responsibility under a grant agreement with RUS.

* * * * *

Financial statements mean the comparative balance sheets, statements of revenue and patronage capital (or statement of operations customary to the type of entity reporting) and statements of cash flows.

* * * * *

Peer review means an approved study, appraisal, or review of one or more aspects of the accounting and auditing practice, not subject to Public Company Accounting Oversight Board permanent inspection, performed once every three years by a CPA firm that is not affiliated with the auditor.

* * * * *

Regulatory liability means a liability imposed on a regulated enterprise when there is an enforceable present obligation to deduct an amount in determining the regulated rate to be charged to customers in future periods.

Related party has the same meaning as defined by FASB and GASB.

Reporting package means:

- (1) The auditor's report on the financial statements;
- (2) The reports on internal control; compliance with provisions of laws, regulations, contracts, and grant agreements; and instances of fraud;
- (3) A complete set of financial statements;
- (4) The schedule of findings and recommendations; and
- (5) All supplemental schedules and information required by this part.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture. Contact information for RUS can be found at RUS Program Accounting Services Division Rural Development (usda.gov).

RUS security agreement means a loan contract, grant agreement, mortgage, security agreement, or other form of agreement that governs the terms and conditions of, or provides security for, loan and/or grant funds provided by RUS to the auditee.

* * * * *

Uniform System of Accounts means, for telecommunications awardees, as contained in 7 CFR part 1770, subpart B, and for electric awardees, as contained in 7 CFR part 1767, subpart B.

Subpart B – RUS Audit Requirements

17. Revise § 1773.3 to read as follows:

§ 1773.3 Annual audit.

(a) Each auditee must have its financial statements audited annually by an auditor selected by the auditee and approved by RUS as set forth in § 1773.4. All auditees, except those subject to the Single Audit Act, must submit audited financial statements on a comparative basis covering at least two consecutive 12-month periods, unless the entity has not been in existence for two consecutive 12-month audit periods. Financial statements should be prepared in accordance with GAAP, or if prepared using a special purpose framework, reconciling schedules should be included. Audits of consolidated financial statements of the parent are not an acceptable replacement for an audit of the auditee.

(b) Each auditee must establish an annual audit date within 12 months of the date of the first advance and must prepare annual financial statements for the audit date established. Each auditee must notify RUS of the audit date at least 90 days prior to the selected audit date.

(c) Auditees must furnish a reporting package to RUS within 120 days of the audit date. (See § 1773.21) Until all loans made or guaranteed by RUS are repaid and unliquidated obligations rescinded, auditees must continue to provide annual audited financial statements.

Auditees with grant funding only must furnish annual audited financial statements in the year of the first advance and until all funds have been advanced or rescinded, and all financial compliance requirements have been fully satisfied.

(d) An auditee that is identified as a non-Federal entity as defined in 2 CFR 200.1, which means a State, local government, Indian tribe, Institution of Higher Education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient, must meet the audit requirements outlined in 2 CFR 200.501 and 200.502 and the Single Audit Act, and not this part.

(1) For auditees expending less than the threshold for expenditure in Federal awards during the year, RUS reserves its right under 2 CFR 200.503 to arrange for an audit performed in accordance with this part.

(2) Within 30 days after the audit date, auditees subject to 2 CFR part 200, subpart F, must notify RUS, in writing via email, of the total Federal awards expended during the year and must state whether the audit will be performed in accordance with the Single Audit Act or this part.

(e) Subpart F of 2 CFR part 200 does not apply to audits of RUS electric and telecommunications cooperatives and for-profit telecommunications awardees unless the awardee has contractually agreed with another Federal agency (*e.g.* Federal Emergency Management Agency) to provide a financial audit performed in accordance with 2 CFR part 200, subpart F. In no circumstance will an auditee be required to submit separate audits performed in accordance with this part and 2 CFR part 200, subpart F.

18. Amend § 1773.4 by revising paragraphs (a)(3), (c), (e), (f), (g) introductory text, (h), (i), and (j) introductory text to read as follows:

§ 1773.4 Auditee's responsibilities.

(a) * * *

(3) The auditor's ability to complete the audit and submit the reporting package to the auditee within 90 days of the audit date.

* * * * *

(c) *Notification of selection.* When the initial selection or subsequent change of an auditor has been made, the auditee must notify RUS, in writing via email, at least 90 days prior to the audit date. Changes in the name of an auditor are considered to be a change in the auditor.

(1) Within 30 days of the date of receipt of such notice, RUS or its designated representative will notify the auditee, in writing via email, if the selection or change in auditor is not satisfactory as identified in § 1773.5.

(2) Notification that the same auditor has been selected for succeeding audits of the auditee's financial statements is not required; however, the procedures outlined in this part must be followed for each new auditor selected, even though such auditor may previously have been approved by RUS to audit records of other RUS auditees.

* * * * *

(e) *Debarment certification.* The auditee must obtain, from the selected auditor, a lower tier covered transaction certification or other method in accordance with 2 CFR 180.300 or 2 CFR part 417, as required by Executive Orders 12549 and 12689 and any rules or regulations in this chapter issued thereunder.

(f) *Peer review report.* The auditee must obtain, from the selected auditor, a copy of the auditor's most recently accepted peer review report, which should be dated within 36 months of the engagement letter.

(g) *Preparation of schedules.* The auditee must prepare any schedules that are required by the auditor to perform the audit, including a complete set of financial statements, a schedule of deferred debits and deferred credits and a detailed schedule of investments in subsidiary and affiliated companies accounted for on the cost, equity, or consolidated basis. The detailed schedule of investments can be included in the notes to the financial statements or as a separate

schedule as long as all information required is adequately disclosed. If the auditee uses a method other than GAAP, reconciliation schedules should be included with the reporting package.

* * * * *

(h) *Scope limitations.* The auditee will not limit the scope of the audit to the extent that the auditor is unable to provide an unmodified opinion that the financial statements are presented fairly in conformity with GAAP due to the scope limitation.

(i) *Submission of reporting package.* The auditee must submit to RUS, via the Agency designated system, the required reporting package as set forth in § 1773.21.

(1) A reporting package that fails to meet the requirements detailed in this part will be returned to the auditee via email with a written explanation of noncompliance.

(2) The auditee must, within 30 days of the date of the email detailing the noncompliance, submit a corrected reporting package to RUS via the Agency designated system.

(3) If a corrected reporting package is not received within 30 days of the date of the email detailing the noncompliance, RUS will take appropriate action, depending on the severity of the noncompliance. Per § 1773.1(d), failure to provide an audit in compliance with this part is a serious violation of the RUS security agreement. RUS relies on audited financial statements to assess and monitor the financial condition of its awardees and to fulfill its fiduciary responsibilities.

(j) *Submission of a plan of corrective action.* If the auditor's report contains findings and recommendations but does not include the auditee's response, the auditee must submit written responses via email to RUS within 180 days of the audit date. The written responses must address:

* * * * *

19. Amend § 1773.5 by revising the introductory text and paragraph (c) and adding paragraph (d) to read as follows:

§ 1773.5 Qualifications of the auditor.

Auditors must meet the qualifications criteria of this section and enter into an audit engagement with the auditee that complies with § 1773.6 to be considered satisfactory to RUS.

* * * * *

(c) *Peer review requirement.* Auditors must be enrolled in and comply with the requirements of an approved peer review program and must have undergone a satisfactory peer review of their accounting and audit practice. The peer review must be in effect at the date of the audit report opinion.

(d) *Peer review reports.* RUS or its designated representative reserves the right to request peer review reports from selected auditors, including evidence indicating actions taken to correct deficiencies identified in the peer review report, if applicable.

20. Amend § 1773.6 by revising paragraphs (a) introductory text, (a)(4), (7), and (9), and (b) to read as follows:

§ 1773.6 Auditor communication.

(a) Under GAGAS and AICPA professional auditing standards, the auditor should agree upon the terms of the engagement with management or those charged with governance, as appropriate. The agreed-upon terms of the engagement should be documented in an audit engagement letter or other suitable form of written agreement. RUS requires the auditor's communication to take the form of an audit engagement letter prepared by the auditor and that it be formally accepted by the auditee's governance board or an audit committee representing the governance board. In addition to the requirements of the AICPA's professional auditing standards and GAGAS, the engagement letter must also include the following:

* * * * *

(4) That the auditor acknowledges that it is required under § 1773.7 to contact RUS if the auditor is unable to resolve scope limitations imposed by the auditee, or if such limitations in scope violate this part. Acceptance of the engagement letter by the auditee is required, thus granting the auditor permission to directly notify RUS as needed;

* * * * *

(7) That the auditor will perform the audit and will issue the required reports and the auditee will prepare and submit the reporting package in accordance with the requirements of this part;

* * * * *

(9) That the auditor will make all audit documentation available to RUS or its representatives (including but not limited to OIG and GAO), upon request, and will permit the photocopying or imaging of all such audit documentation.

(b) A copy of the audit engagement letter must be retained by both the auditee and auditor. The engagement letter must be available at the auditee's office for inspection by RUS personnel or its designated representatives.

21. Revise § 1773.7 to read as follows:

§ 1773.7 Audit standards.

(a) The audit of the financial statements must be performed in accordance with GAGAS and this part in effect at the audit date unless the auditee is directed otherwise, in writing, via email by RUS.

(b) The audit of the financial statements must include such tests of the accounting records and such other auditing procedures that are sufficient to enable the auditor to express an opinion on the financial statements.

(c) Audit scope limitations are as follows:

(1) As noted under § 1773.4(h), the auditee will not limit the scope of the audit to the extent that the auditor is unable to meet RUS audit requirements without prior written approval of RUS.

(2) If the auditor determines during the audit that an unmodified opinion cannot be issued due to a scope limitation imposed by the auditee, the auditor should use professional judgment to

determine what levels of the auditee's management and/or those charged with governance should be informed.

(3) After informing the auditee's management and/or those charged with governance, if the scope limitation is not adequately resolved, the auditor should immediately contact RUS.

22. Revise § 1773.8 to read as follows:

§ 1773.8 Audit date.

The annual audit must be performed as of the end of the same calendar month each year unless prior approval to change the audit date is obtained, in writing via email, from RUS or its designated representative.

(a) An auditee may request a change in the audit date by writing via email to RUS at least 60 days prior to the currently approved audit date, providing justification for the change.

(b) The time period between the prior audit date and the newly requested audit date must be no longer than twenty-three months.

(c) Comparative financial statements must be prepared and audited for the 12 months ending as of the new audit date and for the 12 months immediately preceding that period.

23. Revise § 1773.9 to read as follows:

§ 1773.9 Disclosure of fraud, and noncompliance with provisions of law, regulations, contracts, and grant agreements.

(a) In accordance with GAGAS, the auditor is responsible for planning and performing the audit to provide reasonable assurance about whether the financial statements are free of material misstatement due to error or fraud. The auditor must also plan the audit to provide reasonable assurance of detecting material misstatements resulting from violations of provisions of laws, regulations, contracts, or grant agreements that could have a direct and material effect on the financial statements.

(b) If specific information comes to the auditor's attention that provides evidence concerning the existence of possible violations of provisions of laws, regulations, contracts, or

grant agreements that could have a material indirect effect on the financial statements, the auditor should apply audit procedures specifically directed to ascertaining whether a violation of provisions of laws, regulations, contracts, or grant agreements has occurred.

(c) Pursuant to the terms of its audit engagement letter with the auditee, the auditor must immediately report, in writing via email, all instances of fraud, illegal acts, and all indications or instances of noncompliance with laws, whether material or not, to:

(1) The president of the auditee's governance board;

(2) RUS; and

(3) OIG, as follows:

(i) For all audits performed in accordance with § 1773.3(d) (audits conducted in accordance with 2 CFR part 200), report to the USDA-OIG-Audit, National Single Audit Coordinator for USDA, 1400 Independence Ave SW, Ste 419 Washington, DC 20250, e-mail: OIG-USDAsingleaudit@oig.usda.gov, or online at: <http://usdaoig.oversight.gov>.

(ii) For all other audits conducted in accordance with § 1773.3 report to the USDA Office of Inspector General online at: <https://usdaoig.overight.gov>. If you need to provide any documents concerning your complaint, please fax to (202) 690-2474 or mail to USDA, OIG Hotline, P.O. Box 23399, Washington, DC 20026-3399, or alternately by telephone (800) 424-9121. Please note on your documents that you submitted your complaint online or by telephone.

24. Revise § 1773.10 to read as follows:

§ 1773.10 Access to audit documentation.

Pursuant to the terms of this part and the audit engagement letter, the auditor must make all audit documentation available to RUS, or its designated representative, upon request and must permit RUS, or its designated representative, to photocopy or image all audit documentation.

Subpart C – RUS Requirements for the Submission and Review of the Reporting Package

§ 1773.20 [Amended]

25. Amend § 1773.20 by removing paragraph (b) and redesignating paragraph (c) as paragraph (b).

26. Amend § 1773.21 by revising paragraphs (b) through (e) to read as follows:

§ 1773.21 Auditee's review and submission of the reporting package.

* * * * *

(b) The auditee must furnish RUS with an electronic copy of the reporting package, as described in paragraph (e) of this section, within 120 days of the audit date as provided for in § 1773.3.

(c) The auditee must furnish RUS with a copy of its plan for corrective action, if any, within 180 days of the audit date.

(d) The auditee must include in the reporting package comparative balance sheets, statements of revenue and patronage capital (or statement of operations customary to the type of entity reporting) and statements of cash flows, a copy of each defined report or schedule, and a summary of recommendations or similar communications, if any, received from the auditor as a result of the audit.

(e) All required submissions to RUS described in paragraphs (b) through (d) of this section should be furnished electronically. The electronic copy must be provided in an unlocked or unencrypted Portable Document Format (PDF). All RUS electric and telecommunications auditees shall upload the reporting package to the Agency designated system.

Subpart D – RUS Reporting Requirements

27. Revise § 1773.31 to read as follows:

§ 1773.31 Auditor's report on the financial statements.

The auditor should form an opinion on whether the comparative financial statements as a whole are presented fairly, in all material respects, in accordance with GAAP, and issue a written report that meets AICPA professional auditing standards and GAGAS requirements. The report must include the manual, printed, or digital signature of the audit firm.

28. Amend § 1773.32 by revising the section heading and paragraphs (a) introductory text, (b), and (c) to read as follows:

§ 1773.32 Reports on internal control; compliance with provisions of laws, regulations, contracts, and grant agreements; and instances of fraud.

(a) As required by GAGAS, the auditor must prepare a written report describing the scope of the auditor's testing of internal control over financial reporting and of compliance with provisions of laws, regulations, contracts, and grant agreements, and that the tests provided sufficient, appropriate evidence to support opinions on the effectiveness of internal control and on compliance with provisions of laws, regulations, contracts, and grant agreements. This report must include the manual, printed or digital signature of the audit firm and must include the following items as appropriate:

* * * * *

(b) When the auditor detects instances of noncompliance or abuse that have an effect on the financial statements that are less than material but warrant the attention of those charged with governance, they should communicate those findings in writing to those charged with governance in a separate communication. If the auditor has issued a separate communication detailing immaterial instances of noncompliance or abuse, the reports on internal control; compliance with provisions of laws, regulations, contracts, and grant agreements; and instances of fraud must be modified to include a statement such as:

“We noted certain immaterial instances of noncompliance [and/or abuse], which we have reported to the management of (auditee's name) in a separate letter dated (month, day, 20XX).”

(c) If the auditor has issued a separate letter to management to communicate other matters involving the design and operation of the internal control over financial reporting, the reports on internal control; compliance with provisions of laws, regulations, contracts, and grant agreements; and instances of fraud must be modified to include a statement such as:

“However, we noted other matters involving the internal control over financial reporting that we have reported to the management of (auditee's name) in a separate letter dated (month, day, 20XX).”

* * * * *

§ 1773.33 [Removed and Reserved]

29. Remove and reserve § 1773.33.

30. Revise § 1773.34 to read as follows:

§ 1773.34 Schedule of findings and recommendations.

The auditor must prepare a schedule of findings and recommendations to be included with the reports on internal control; compliance with laws, regulations, contracts, and grant agreements; and instances of fraud. The schedule of findings and recommendations shall be developed and presented utilizing the elements of a finding discussed in GAGAS and shall include recommendations for remediation. If the schedule does not include responses from management, as well as any planned corrective actions, those items must be submitted directly to RUS by management in accordance with § 1773.4(j).

Subpart E – RUS Audit Requirements and Documentation

31. Revise § 1773.38 to read as follows:

§ 1773.38 Scope of engagement.

The audit requirements set forth in this part should be met annually by the auditor during the audit of the RUS auditee's financial statements. The auditor must exercise professional judgment in determining whether any auditing procedures in addition to those mandated by GAGAS or this part should be performed on the auditee's financial records in order to afford a reasonable basis for rendering the auditor's opinion on the financial statements and the reports on internal control; compliance with provisions of laws, regulations, contracts, and grant agreements; and instances of fraud; and schedule of findings and recommendations.

§§ 1773.39, 1773.41, 1773.42, 1773.43, and 1773.44 [Removed and Reserved]

32. Remove and reserve §§ 1773.39, 1773.41, 1773.42, 1773.43, and 1773.44.

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Rural Development

[FR Doc. 2023-01496 Filed: 2/3/2023 8:45 am; Publication Date: 2/6/2023]